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SC
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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 257.

HENRY E. FRANKENBERG COMPANY, PETITIONER,

vs.

THE UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FOR CERTIORARI FILED APRIL 16, 1906.
CERTIORARI AND RETURN FILED MAY 7, 1906.

(20,200.)

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a United States Circuit Court of Appeals for the Second Circuit.

(3770.)

THE HENRY E. FRANKENBERG —, Appellant,
vs.
THE UNITED STATES, Appellee.

Transcript of Record.

Appeal from the Circuit Court of the United States for the Southern District of New York.

[Stamped:] United States Circuit Court of Appeals, Second Circuit. Filed Sep. 12, 1905. William Parkin, Clerk.

1 United States Circuit Court, Southern District of New York.

In the Matter of Certain Merchandise Imported by HENRY E. FRANKENBERG COMPANY.

To the Honorable United States Circuit Court for the Southern District of New York:

Your petitioner respectfully shows that it duly imported and entered at the port of New York the goods described in the schedule annexed, and that the Collector of Customs of the United States for the port of New York thereupon levied certain duties in excess of the rate and amount required by law, and that upon all goods so entered for consumption said excessive duties have been duly paid.

That within the time required by law protests in writing were duly made and served in behalf of your petitioner giving notice to said Collector distinctly and specifically and in respect to each entry or payment the reasons for the objections to his decisions; and thereafter, and within the past thirty days from the date of this petition, a decision upon said notices or protests was made by the Board of General Appraisers, or by a majority of them as by the statute provided, adverse to the claims of your petitioner.

That your petitioner is dissatisfied with said decision, and
2 the following is a statement of the errors of law and fact complained of, viz.:

The General Appraisers erred:

1. In finding that the goods covered by this case are metal beads strung on cotton cords.

2. In not finding from the evidence in the case that the goods are metal beads temporarily strung on cords solely for the purposes of convenience or transportation.

3. In not holding that the goods in this case are beads not threaded or strung within the meaning of the provisions for such goods in paragraph 408 of the Tariff Act.

4. In holding that the goods are dutiable at the rate of 45 per cent. ad valorem under the provisions of paragraph 193 of the Tariff Act of July 24, 1897, for

"Articles or wares not specially provided for in this Act, composed "wholly or in part of * * * metal * * * , forty five per "centum ad valorem."

5. In not holding that the goods are dutiable under the provision in paragraph 408 of the said Tariff Act for

"Beads of all kinds, not threaded or strung, thirty-five per centum "ad valorem."

6. In not sustaining the claims set out in the protests of the importer.

That the following is a schedule of the importations embraced in this petition, viz.:

Description of merchandise.	Name of vessel.	Date of entry. 1902.	Date of protest. 1902.	Date of decision.
Metal beads.....	La Touraine.....	Feb. 17.	July 7.	Dec. 21, 1904.
Metal beads.....	La Savoie.....	Mar. 29.	Aug. 16.	Dec. 21, 1904.

3 Wherefore, your petitioner prays that the said Circuit Court review the questions of law and fact involved in the decision of the said Board of Appraisers, heretofore made in each of the above matters as to the classification and rate of duty assessed upon said merchandise, and for that purpose prays that an order may be entered requiring the said Board of Appraisers to return to said Circuit Court the record and evidence taken by them, together with a certified statement of the facts involved in each of the matters and their decisions thereon.

And your petitioner further prays for such additional orders and relief under the Statutes of the United States in such cases made and provided, as it may, in the judgment of the Court, be entitled to.

Dated New York, January 10th, 1905.

HENRY E. FRANKENBERG CO.,
Petitioner,
By FREDERICK W. BROOKS, *Attorney.*

4 United States Circuit Court, Southern District of New York.

In the Matter of Certain Merchandise Imported by HENRY E. FRANKENBERG COMPANY.

Upon reading and filing the petition of Henry E. Frankenberg Company in this case, dated the tenth day of January, 1905, and upon motion of Frederick W. Brooks, attorney for the petitioner, it is—

Ordered, That the Board of United States General Appraisers, sitting at the port of New York, return to this Court the record and the evidence taken by them, together with a certified statement of

the facts involved, and their decisions thereon, as to the dutiable classification of the following imported merchandise embraced in said petition, viz.:

Description of merchandise.	Name of vessel.	Date of entry.	Date of protest.	Date of decision.
		1902.	1902.	1904.
Metal beads.....	La Touraine.....	Feb. 17.	July 7.	Dec. 21.
Metal beads.....	La Savoie.....	Mar. 29.	Aug. 16.	Dec. 21.

Dated the tenth day of January, A. D. 1905.

E. H. LACOMBE,
U. S. Circuit Judge.

Bond for Costs.

Know all men by these presents, That I, Frederick W. Brooks, Jr., am held and firmly bound unto the United States of America, in the sum of fifty dollars, to be paid to the said United States of America, for the payment of which, well and truly to be made, I bind myself, my heirs, executors and administrators jointly and severally, firmly by these presents.

Sealed with my seal and dated the 10th day of January, 1905.

Whereas, Henry E. Frankenberg Company has applied to the Circuit Court of the United States, for the Southern District of New York, for a review of the questions of law and fact involved in certain decisions of the Board of General Appraisers, referred to in the petition of said petitioner, dated December 21st, 1904.

Now, therefore, the condition of this obligation is such that if the above named Henry E. Frankenberg Co. shall prosecute said proceeding to effect, and pay all damages and costs which shall be awarded against it in this Court if it shall fail to make said proceeding good, then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

FREDERICK W. BROOKS, JR. [L. S.]

UNITED STATES OF AMERICA, *Southern District of New York, ss:*

Frederick W. Brooks, Jr., being duly sworn, deposes and says that he is worth the sum of one hundred dollars over and above all his just debts and liabilities.

6 Sworn to before me, and I also further certify that the foregoing bond was sealed, delivered, taken and acknowledged before me this 10th day of January, A. D. 1905.

JOHN P. EELLS,
Notary Public. [SEAL.]

This bond is approved as to form and amount and sufficiency of surety.

E. H. LACOMBE,
U. S. Circuit Judge.

7 *Return.*

In the Circuit Court of the United States, for the Southern District of New York.

Suit No. 3770.

In the Matter of HENRY E. FRANKENBERG COMPANY
v.
UNITED STATES, Being an Application for Review of a Decision of the Board of General Appraisers.

Return of the Board of United States General Appraisers to the Order of Hon. E. H. Lacombe, U. S. Circuit Judge.

Dated New York, Feb. 10, 1905.

The Board of United States General Appraisers, sitting at New York, in response to the order of the Court in the above matter, make the following return of the record and evidence taken by them in the above matter, and of the facts involved therein, as ascertained by them.

This return comprises:

(1) The importers' protests (2264-H and 4428-H), each of which is accompanied by a letter of the collector of customs, marked respectively Exhibits A to D.

(2) A transcript of testimony taken by the Board November 25, 1902, marked Exhibit E.

(3) A transcript of testimony taken by the Board on protest 111414, the subject of G. A. 5677, which was considered a
8 part of the record in this case, and is marked Exhibit F.

(4) A transcript of testimony taken by the Board on protest 138405, which was also considered by the Board and which is marked Exhibit G.

(5) The samples referred to in the testimony, which are enclosed in an envelope marked Exhibit H.

(6) A copy of the decision of the Board, which is known as G. A. 5878 (T. D. 25891) and is marked Exhibit I.

EXHIBIT A, SUIT 3770.

Please send all notices relating to this protest to F. W. Brooks, 27 William St., New York City.

NEW YORK, *July* 7, 1902.

SIR: We hereby protest against your liquidation and assessment of duty on our entry for Beads in case 393 and other merchandise of the same character more particularly described on entry and invoices by marks and numbers, imported by us in the vessel named below. We claim that the goods in question are dutiable under the

Tariff Act of July 24, 1897, as follows: at 35% ad. val. under the provisions in par. 408 for beads of all kinds not threaded or strung.

The foregoing claims are made directly, or by virtue of the similitude clause in Sec. 7. We further claim that the goods are dutiable under Sec. 6 at 10% ad val. or if not so at 20% ad val.

We also protest against the payment of all duties not legally chargeable upon said importation, and pay the amount exacted under duress and compulsion to obtain and retain peaceable pos-
9 session of the goods, holding you and the Government responsible for its return.

HENRY E. FRANKENBERG CO.,
By F. W. BROOKS.

To the Collector of Customs, New York City.

Entry No.	Bond No.	Vessel.	Date of entry.	Date of liquidation.
31153		La Touraine	Feb. 17, 1902.	June 28, 1902.

(Endorsed:) 2264 H. 8354. Henry E. Frankenberg Co. La Touraine. Beads Strung. To H. M. S.
Custom House, New York, July 7, 1902. Received.

C.	Vessel.	Ent. 1902.	Liq. 1902.	Pro. 1902.
	La Touraine	Feb. 18.	Jun- 28.	July 7.

EXHIBIT B, SUIT 3770.

Letter to General Appraisers Submitting Protest.

United States Customs Service, Port of New York.

COLLECTOR'S OFFICE, *July 22nd*, 1902.

Board of U. S. Gen'l Appraisers at the Port of New York.

GENTLEMEN: I submit the Protest of Henry E. Frankenberg Co. No. 8354, 2264H, against the assessment of duty as made by this Office on certain "Beads," imported by them in the "La Touraine," Feb. 18, 1902. An inspection of the invoice shows that the
10 goods in question were returned by the Appraiser as "Metal Beads Strung as Manufactures of Metal 45%."

Duty was assessed thereon at 45% ad valorem under the provisions of av. 193, Act of July 24, 1897.

Note Department Letter of April 3, 1902. Note also G. A., 5126 and 5162.

I have to report that the claimants have complied with the requirements of Section 14 of the Act of June 10, 1890, so far as lodging protest within the statutory time. The Naval Officer concurs in the decision of this Office.

The entry and invoice covered by the above protest are inclosed herewith.

Respectfully, J. J. COUCH,
Special Deputy Colletor.

3 Inclosures.

(Endorsed:) 2264H. Port of New York. Collector's Office, July 22, 1902, N. N. Stranahan, Collector.

Submitting Protest 8354 of Henry E. Frankenberg Co., 3 papers inclosed.

Received by Board of U. S. General Appraisers July 24, 1902.

EXHIBIT C, SUIT 3770.

Please send all notices relating to this protest to F. W. Brooks, 27 William Street, New York City.

NEW YORK, *August* 16, 1902.

SIR: We hereby protest against your liquidation and assessment of duty on our entry for Beads and other merchandise of the same character more particularly described on entry and invoices 11 by marks and numbers, imported by us in the vessel named below. We claim that the goods in question are dutiable under the Tariff Act of July 24, 1897, as follows: at 20% ad val., under par. 435 for imitations of precious stones; or at 25% ad val., under par. 448 for mnfs. of wax or of which wax is the component material of chief value; or at 35% ad val. under par 408 for beads of all kinds not threaded or strung; or at 35% ad val. under par 450 for mnfs. of pearl, shell or gelatin or of which these substances, or either of them, is the component material of chief value; or at 35% ad val. under par. 208 for mnfs. of wood or of which wood is the component material of chief value; or at 45% ad val. under par. 193 for articles of metal; or at 45% ad val. under par. 112 for mnfs. of glass or paste or of which glass or paste is the component material of chief value.

The foregoing claims are made directly, or by virtue of the similitude clause in Sec. 7. We further claim that the goods are dutiable under Sec. 6 at 10% ad val., or if not so at 20% ad val.

We also protest against the payment of all duties not legally chargeable upon said importation, and pay the amount exacted under duress and compulsion to obtain and retain peaceable possession of the goods, holding you and the Government responsible for its return.

HENRY E. FRANKENBERG CO.,
By F. W. BROOKS.

To the Collector of Customs, New York City.

Entry No.	Bond No.	Vessel.	Date of entry.	Date of liquidation.
59000		La Savoie.....	March 29, 1902.	August 11, 1902.

(Endorsed:)—4428H—10545—Henry E. Frankenberg Co.—La Savoie—Beads (Metal, &c,).

12 Custom House, New Yark, Aug. 16, 1902. Received.

C.	Vessel.	Ent. 1902.	Liq. 1902.	Pro. 1902.
	La Savoie..... ...	Mar. 31.	Aug. 11.	Aug. 16.

EXHIBIT D, SUIT 3770.

Letter to General Appraisers Submitting Protest.

United States Customs Service, Port of New York.

COLLECTOR'S OFFICE, *Sept. 5th,* 1902.

Board of U. S. Gen'l Appraisers, at the Port of New York.

GENTLEMEN: I submit the Protest of Henry E. Frankenberg Co., No. 10545, against the assessment of duty as made by this Office on certain "Beads," imported by them in the "La Savoie," March 31, 1902. An inspection of the invoice shows that the goods in question were returned by the Appraiser as "Metal Beads Strung as Manufactures of Metal, 45%."

Duty was assessed thereon at 45% ad valorem under the provisions of Par. 193, Act of July 24, 1897.

Note Department Letter of April 3, 1902. Note also G. A. 5126 and 5162.

I have to report that the claimants have complied with the requirements of Section 14 of the Act of June 10, 1890, so far as lodging protest within the statutory time.

13 The Naval Officer concurs in the decision of this Office.

The Entry and invoice covered by the above protest are inclosed herewith.

Respectfully,

J. J. COUCH,
Special Deputy Collector.

3 Inclosures.

(Endorsed)—4428H. Port of New York, Collector's Office, Sept. 5th, 1902. N. N. Stranahan, Collector.

Submitting Protest 10545, of Henry E. Frankenberg Co. 3 Papers inclosed.

Received by Board of U. S. General Appraisers, Sep. 6, 1902.

14 EXHIBIT E, SUIT 3770.

Before the Board of U. S. General Appraisers.

In the Matter of the Protests of HENRY E. FRANKENBERG Co., 2264-H and 4428-H.

NEW YORK, *November* 25, 1902.

Present: General Appraiser Somerville, Chairman; General Appraiser Fischer; General Appraiser Waite.

Appearances.

Albert H. Washburn, Esq., Counsel for the Treasury Department;
Frederick W. Brooks, Esq., Counsel for the Importers.
Chas. F. Kurz, Stenographer.

W. V. FRANKENBERG, called as a witness on behalf of the importers, having been duly sworn, testified as follows:

By Mr. BROOKS:

Q. *By* what firm are you connected with?
A. The H. E. Frankenberg Co.
Q. What is your position with that corporation?
A. President.
Q. Are you familiar with the goods imported by that corporation?
15 A. Yes, sir.
Q. Please look at the invoice covered by Protest 2264-F, and state if you are familiar with the goods described thereon as bunches of steel beads?
A. I am; yes, sir.
Q. Have you a sample of those goods?
A. Yes, sir.

Sample offered in evidence, admitted and marked Exhibit 1, 2264-F, Nov. 25, 1902.

Q. Do you know how those beads were strung—on what?
A. On this cotton thread.
Q. Do you know the object in putting them on this cotton thread?

Mr. WASHBURN: I object to that.
Objection overruled.

A. For the purpose of holding these things, for the purpose of facilitating transportation, that is all I can see.
Q. Do you know the use to which these beads are put in this country?
A. Yes, sir.
Q. What is that use?

Mr. WASHBURN: I object unless the witness is further qualified.

Q. To whom do you sell these beads?
A. To people in the dry goods business, notion business.
Q. Do you ever sell any to manufacturers?
A. We have not; no, sir. I have, I believe, in one or two cases.
Q. Have you any knowledge whatever as to the use to which these goods are put?
A. Yes, sir.
Q. What is the source of your knowledge?
A. Well, putting on purses.
Q. No, no; what is the source of your knowledge?
16 A. We have sold them to people who make up these purses.

By General Appraiser FISCHER:

Q. What kind of people make up purses—do you mean manufacturers of purses?
A. Yes, sir.
Q. You stated a moment ago you did not sell to manufacturers?
A. I said possibly one or two.

By Mr. BROOKS:

Q. Have you had occasion to ascertain from manufacturers of purses to whom you have sold goods of this kind what they do with them?
A. No, I have not.
Q. Please state to the Board what knowledge you have, if any, of the use to which these beads are put?
A. Nothing further than except for purses, very largely used on purses.

By General Appraiser FISCHER:

Q. Are they ever used as strung beads are used?
A. No, sir; never.
Q. Are they ever worn on strings about the neck?
A. No, sir; never.

By Judge SOMERVLLE:

Q. Are they ever used in the condition in which they appear in this sample?
A. Absolutely worthless in that condition.

By Mr. WASHBURN:

Q. What is your business—what sort of business are you in?
A. Woolen yarns, embroideries and notions business.
Q. And under the latter head you carry these beads?
17 A. Yes, sir.
Q. And this is the condition in which you——
A. Used as an article used in making purses?
Q. That is the condition in which you import these goods?
A. Yes.

Q. How long have you been importing them in this condition?
A. Possibly for fifteen or twenty years.
Q. Always the same way?
A. Always the same way.
Q. You say you sell to a certain extent to manufacturers, is that right?
A. Yes, to one or two manufacturers.
Q. Who are they?
A. One is in Chicago, by the name of Goss(?)
Q. What does he manufacture?
A. Purses.
Q. What is the other one's name?
A. I believe that is the only one I can recollect at the present moment.
Q. In addition to selling to this Chicago firm have you other sales for these goods?
A. Oh, yes.
Q. What is that?
A. They are used for embroidery purposes.
Q. To what class of trade do you sell them?
A. Drygoods trade; all large drygoods houses handle them.
Q. Wholesale houses do you mean?
A. Wholesale as well as retail.
Q. They use them for various embroidery purposes?
A. Yes, sir; they use them in their art departments.

Protest 4428–H.

By Mr. BROOKS:

18 Q. Please look at the invoice in this case and state if you are familiar with the merchandise described thereon as bunches of cut steel beads?
A. Yes, sir.
Q. Do they differ in any way from the article already offered in evidence in the previous case?
A. No, sir.

HUGO G. VEITH, called as a witness on behalf of the importers, having been duly sworn, testified as follows:

By Mr. BROOKS:

Q. With what firm are you acquainted?
A. A. & H. Veith.
Q. What is the business of that firm?
A. Importer of beads, fancy goods, and similar goods.
Q. How long have you been dealing in beads?
A. Twenty-five years.
Q. Please look at the sample already in evidence in this case and state if you are familiar with goods of this kind?
A. Yes, sir.

Q. Have you bought and sold them to any great extent?
A. Yes, sir.
Q. For how long?
A. The last twenty-five years.
Q. Do you know the use to which those beads are put?
A. Yes, sir.
Q. What is the source of your information as to the source of those beads?
A. I have been manufacturing with the same goods.
Q. To what use do you put them as a manufacturer?
A. Sewing on nets, making purses.
Q. When you use beads of that kind in manufacturing
19 do you use them in the condition in which they are imported?
A. No, sir.
Q. What do you do with them after importation?
A. Each string is taken out and another string tied on—that is, for one purpose; for another purpose they are unstrung and picked up by a needle. This case has been decided before.

By Mr. WASHBURN:

Q. Sometimes they are restrung?
A. Sometimes they are restrung, and other times they are taken off the string and used with a needle.

By Judge SOMERVILLE:

Q. What sort of threads are those beads on?
A. Cotton threads.
Q. Is that a stout thread or——
A. The thread is used—they are put up in bunches in order to sell them, handle them better. If they are not put up in bunches half the beads have got no holes. They will not buy them except in bunches, in order to know that each bead has got a hole.
Q. Beads without holes are comparatively worthless?
A. As a rule.

By Mr. WASHBURN:

Q. These are used for making purses?
A. Purses and embroidery.
Q. Embroidering what?
A. Embroidering laces or silks or anything.
Q. For what purpose?
A. Oh, for various purposes.
Q. Mention some of then?
A. For cushions, embroidering cushions, it has been used for the last fifty years, that kind.
20 Q. Use them for embroidering dresses or anything of that kind?
A. Yes, the same as any other bead is used.
Q. The same as any other bead is used?
A. Yes, sir.
Q. Have they any use except embroidery purposes so far as you know?

A. Any other purpose except embroidering?
Q. Yes.
A. Make purses out of them; regular crochet purses.
Q. Anything else you think of that you know about?
A. I don't know. They are used for so many things that I cannot think what they are not used for.
Q. They are used as articles of adornment more or less?
A. No, never.

By General Appraiser FISCHER:

Q. Did you ever buy similar beads to those unstrung?
A. There was a time when they were short, they could not string them, they didn't have hands enough to string them, and we imported them that way, but we got stuck on them, could not sell them.
Q. Does the market price vary if they are strung or unstrung?
A. No, sir; they are always the same price; it is only a question if they have got hands to string them, when you have got to take them unstrung, in bulk.
Q. What percentage of them are defective if you buy them unstrung?
A. That depends on how honest the manufacturer is.
Q. What is it about that—does it vary?
21 A. Yes, sir.
Q. Ten per cent., five per cent.?
A. That I cannot say.
Q. As low as five per cent. or as high as fifteen per cent.?
A. Oh, yes; sometimes as high as fifty per cent. if it is a dishonest manufacturer.
Q. It will vary.
A. Yes, sir.

By Judge WAITE:

Q. When you get them strung you get them just as cheap as unstrung?
A. The same price.
Q. String them by hand?
A. Women take fifteen or twenty needles and push them in——
Q. Fifteen or twenty needles?
A. Yes, they have got the knack of stringing them.

22 EXHIBIT F, SUIT 3770.

Before the Board of U. S. General Appraisers.

In the Matter of the Protest, No. 111,414, of CAMPBELL, METZGER & JACKSON.

Strung Beads.

NEW YORK, *May* 10, 1904.

Before General Appraiser Sharretts.

Appearance-.

C. D. Lawrence, Esq., Ass't Counsel for Government.
R. M. Fleming, Stenographer.

MORRIS GOLDBERG, of 7 Bond street, New York, called as a witness on behalf of the Government, being duly sworn, testified as follows:

By Mr. LAWRENCE:

Q. Mr. Goldberg, with what firm are you connected?
A. I am myself, Morris Goldberg.
Q. What is your business?
A. Principally is my business of beads.
Q. How long have you been in that business.
A. Well, I am in that business thirty-seven years here and four years an apprentice in London.
Q. Mr. Goldberg, when you say you handle beads, what do you mean by that; do you import them?
23 A. I import beads and sell them to manufacturers and dealers.
Q. Your dealings are wholesale entirely?
A. Wholly wholesale.
Q. Do you import beads in various conditions?
A. Yes, sir.
Q. Is the term strung beads a well known term in your trade?
A. Yes, sir.
Q. What does it mean?
A. Well, we import strung beads for to sell it to different department stores and to different trades, and we import loose beads for manufacturing purposes.
Q. And do you import loose beads which have been pierced?
A. Yes, sir.
Q. Referring to the beads which you designate as strung beads, such beads as are usually imported strung on cotton threads in bunches and are intended to be taken off and used for manufacturing purposes here, how are they known?
A. They are known as strung beads.

Q. Does the process of stringing these beads on thread and placing them in bunches enhance their value appreciably?

A. In Europe they vary in value from about fifteen per cent. to about eighteen per cent. dearer when they are strung on bunches.

Q. Does the cost of stringing increase the price of beads about how many per cent.

A. About fifteen per cent.

Q. About fifteen per cent?

A. Yes, on cheap goods.

Q. How do you account for that difference in value between the beads strung in bunches and the loose beads?

A. In the labor of the girl or whoever strings the goods
24 when they string them all at once it is a long needle, all at once it is too much space in the centre. They have to take it off again and throw away the imperfect beads and string them uniform.

Q. So that among the loose beads you find a great many that are not pierced through?

A. Yes, sir.

Q. And that adds to the labor?

A. Makes it extra about the labor.

Q. Mr. Goldberg, how long have you been familiar with the terms "threaded" and "strung beads?"

A. Thirty-seven years.

Q. Is is true, is it not, that on and prior to July 24, 1897, the terms threaded and strung beads was a familiar one in your trade?

A. Yes, sir.

Q. Did that term apply to beads threaded or strung in bunches?

A. Certainly in bunches or in hanks. The people used different hanks; some use single bunches, some use hanks, and they all come strung.

HUGO G. VEITH, of 622 Broadway, New York, called as a witness on behalf of the Government, testified as follows:

Q. Mr. Veith, what is your business, please?

A. Importer of beads.

Q. With what firm are you connected?

A. A. & H. Veith.

Q. What is your particular office?

A. Buying and selling beads, etc.

Q. How long have you been connected with that firm?

A. Twenty years.

Q. Do you go abroad and do their buying?

A. Yes, sir; sometimes.

Q. Do you import beads in large quantities?
25 A. Yes, sir.

Q. Are your dealings wholesale?

A. Well, wholesale and retail.

Q. In your trade are you familiar with the term "strung beads?"

A. Yes, sir.

Q. Does that apply to beads that are strung on thread in bunches?

A. Strung on thread in bunches; yes, sir.

Q. Mr. Veith, as a matter of fact, beads that are threaded in bunches, imported strung, are they sometimes taken off the bunches and used in manufacturing after importation?

A. Yes, sir.

Q. Are they sometimes used in the condition, the ordinary mat beads or bunched beads, are they used on the strings on which they come?

A. Yes, sir.

Q. Are they sometimes slipped from the original string to a more permanent string at a very little cost?

A. Yes, sir.

Q. Are all these goods known as strung beads or not?

A. They are known as strung beads in trade and commerce.

Q. Mr. Veith, does the process of threading and bunching the beads for importation increase their value appreciably?

A. Well, I would like to answer that, first, the beads are made and after that they are strung and this stringing increases the price of the beads.

Q. Whether they are strung temporarily or permanently, does it increase the value materially?

A. It increases the price no matter what form they are strung.

Q. About how much in your opinion does the stringing enhance the value of the beads?

A. Generally from 15 to 20 per cent.

26 Q. Can you state briefly why the stringing increases the value so much?

A. There is a considerable labor attached to it; the beads after they are manufactured have to be threaded, which increases the cost of the goods. It goes through different hands from those that make the goods, first they are made and then they are strung.

Q. Does each one have to be handled separately?

A. They have to be handled.

Q. And amongst the loose beads they find a great many imperfect beads?

A. Find a great many imperfect, which have to be thrown away.

Q. And you always find such beads among the loose beads?

A. Always.

Q. Mr. Veith, how long have you been familiar with the term threaded or strung beads?

A. Beads were always known as threaded or strung beads.

Q. Can you state as a matter of fact that on or prior to July 24, 1897, the term threaded or strung beads was familiarly known in your trade?

A. Yes, sir; strung beads.

Q. Does your statement mean that beads that were strung on threads for temporary use were commercially known at that time as strung beads?

A. Strung beads.

27 EXHIBIT G, SUIT 3770.

Before the Board of U. S. General Appraisers.

In the Matter of Protest of MORRIS GOLDBERG, #138,405.

Subject: Beads in Bunches.

Board No. 1.

Present: General Appraiser Sharretts.

NEW YORK, *Dec.* 14, 1904.

Appearances.

Comstock & Washburn (Mr. Hedges), Counsel for the Importers.
B. A. Levett, Esq., Asst. Counsel for Treasury Dept.
E. Nothiger, Stenographer.

JOHN L. GOLDBERG, called as a witness on behalf of the importers, being duly sworn, testified as follows:

By Mr. HEDGES:

Q. What is your business, Mr. Goldberg?
A. I am salesman of the firm of Morris Goldberg.
Q. How long have you been in that capacity?
A. Since January, 1892.
Q. And you are familiar with the importations of Morris Goldberg—the merchandise they handle?
A. Yes, sir.

Protest 138,405.

Q. I show you the invoice, and calling your attention to the item invoiced as "Bunches of metal beads," in case 414, ask you if
28 you have a sample of that merchandise?
A. Yes, sir.
Q. Did you take a sample from this particular case?
A. Yes, from the goods in that case.

Sample referred to is offered in evidence.

By Mr. LEVETT:

Q. You say you took this out of the case yourself?
A. Yes.
Q. When?
A. To-day.
Q. Are the goods still in your possession?
A. Yes.

Sample previously referred to is received in evidence and marked Exhibit #1, Protest #138405, Dec. 14, 1904.

By Mr. HEDGES:

Q. How are these beads strung?
A. On white cotton threads.
Q. Do you sell these?

Question objected to as being immaterial.

(Witness answers:) We sell them by the bunch—so much per 100 bunches.

Q. Do you know how they are used?
A. Yes.
Q. How are they used?
A. They are used for sewing, for embroidering—different purposes; sometimes for ladies' neckwear, for slipper manufactures, for dress trimmings—numerous uses.

By Mr. LEVETT:

A. Are they used in the condition they are now?
A. No.
Q. What has to be done to them?
A. Have to be taken off the string.

Counsel for the Government requests that testimony taken in the case of Campbell, Metzger & Jacobson (G. A., 5677; T. D., 25291) be made a part of the record in this case.

Witness states that there is only the one item on the invoice on which protest is made.

EXHIBIT I, SUIT 3770.

Form 53 A.
General Appraisers.

G. A. 5878 (T. D. 25891.)

United States General Appraisers.

NEW YORK, *Dec.* 21, 1904.

In the Matter of Protests, $\frac{2244}{8354}$ & $\frac{4428}{10345}$ N, of Henry E. Frankenberg Co. Against the Assessment of Duty by the Collector of Customs at the Port of New York, Before Board No. 1.

SHARRETTS, *General Appraiser:*

The issue raised by these protests involves the classification and rate of duty applicable to metal beads strung on cotton cords. The importers contend that such merchandise is dutiable at the rate of 35 per cent. ad valorem under the provision of paragraph 408, act of July 24, 1897.

The collector assessed duty on the goods at 45 per cent. ad valorem, under paragraph 193, as manufactures composed wholly or in part of metal.

In G. A. 5677 (T. D. 25291) the Board, after duly considering the evidence of two of the largest importers of beads

in the United States, which evidence is made a part of the record in the present cases, decided adversely to the importers' contention, the issue then and now being identical. Since the rendition of that decision the Circuit Court of Appeals for the Seventh Circuit has affirmed the Circuit Court for the Northern District of Illinois, in the case of Buettner *v.* United States (suit 1557), holding that beads strung on cotton cord were dutiable under paragraph 408, as beads unstrung. Judge Grosscup, who delivered the opinion of the court, in discussing clauses "A" and "B" of paragraph 408 of the present act, reached the conclusion that:

The difference in the duty in the one—35 per cent. ad valorem—and in the other, 60 per cent. was intended undoubtedly as a differential in favor of domestic manufacturers of such fabrics. The cause, as we interpret it (referring to clause "A"), in view of the clause that follows, has application not to beads temporarily strung or threaded for purposes of transportation, but beads permanently threaded or strung as beads are threaded or strung in the manufacture of the fabrics, nets, wearing apparel and the like. In the interpretation of the statutes the letter must yield to the substance of the distinctions intended to be expressed and it is our judgment that the classification here intended was between metal beads constituting permanently a part of a fabric or article and beads that in their individual state may be worked into such manufactures.

While not concurring in these conclusions, though we recognize the force of the argument advanced by the court, we nevertheless would feel constrained to follow this decision were it not that another tribunal of equal jurisdiction had taken a contrary view.

31 The case referred to is that of Steiner *v.* United States (79 Fed. Rep., 1003), decided by the Circuit Court of Appeals for the second circuit.

There are some cogent facts which persuade us that this latter decision should be followed in this instance. It is not disputed that the merchandise in question is strung beads, and we find as a fact within our knowledge that the importation, the subject of the conflicting decisions above referred to, was of similar description and strung in identically the same manner. The only point with which we have to deal, therefore, is the dictum of the court in the Buettner case, that beads temporarily strung were not of the description of beads Congress intended to exclude from classification under subdivision "A," paragraph 408.

The court in this last-mentioned case suggested an intent on the part of Congress to give certain advantages to domestic manufacturers of beaded goods. This proposition can hardly be refuted, but the whole scheme in the present tariff evinces a determination on the part of Congress to differentiate between crude materials which have not been advanced in value by the application of labor abroad and those which have. Instances of this are found in paragraphs 303 and 385 of Schedules I and L, covering threads or yarns which partake of the nature of raw materials for weavers, but which, having been advanced in value and condition by process of labor, are made dutiable at comparatively high rates. Paragraphs 20 and 435 are among other numerous instances showing the same intent.

The testmony of large importers of beads whose interests were in the direction of seeing a reduction of duties, and one of whom is a protestant in the cases now before us, was to the effect that beads strung on cotton cords for temporary purposes were known
32 and had been known in trade for a period of thirty years as strung beads, and, further, that the labor of assorting and stringing beads added 15 to 20 per cent. to the value of loose beads. Can we not conclude that this fact was the potent cause which induced Congress to eliminate strung beads from paragraph 408 entirely, the rate of 35 per cent. chargeable on the loose beads being regarded as too low for those enhanced in value 15 per cent. by a process of labor abroad, and that of 60 per cent.—the rate chargeable on trimmings and completed articles—as too high? The effect of eliminating strung beads from paragraph 408 does not lead to an incongruous condition, but on the major part of imported beads strung the result would be the imposition of duty at a rate 10 per cent. higher than on beads not strung, and 15 per cent. lower than for the beaded goods. Assuming, for argument's sake, and the assumption is not unreasonable, that the labor of assorting and stringing beads was performed in this country by women and children, it could plausibly be concluded that Congress by legislation secured to them a fair degree of protection. If we are to decide the case within the intent of Congress it will be well to turn to prior tariff acts with a view to ascertaining what the legislative intent was.

Under the act of 1890, paragraph 445, provided for beads, loose, unthreaded and unstrung, and an importation of metal beads temporarily strung on cotton cords, entered at the port of New York during the life of that act, was excluded from classification as beads, loose. This importation was returned for duty by the collector as a manufacture of metal, duty being assessed thereon at the rate of 45 per cent. ad valorem. The correctness of this interpretation of the statutes was successively affirmed by the Board of General Appraisers, the Circuit Court for the Southern District for New York
33 and the Circuit Court of Appeals for the Second Circuit (see G. A., 876 (T. D.), 11,885, 66 Fed. Rep., 726; 79 Fed. Rep., 1,003). The decision of the Circuit Court of Appeals was regarded as final by the Government and importers, and was adhered to and acquiesced in until paragraph 445, act of 1890, was repealed by the act of 1894.

Congress, in framing the tariff act of August 28, 1894, did so with the avowed purpose of reducing duties on crude materials. Having knowledge that by judicial decision temporarily strung beads were classifiable according to material under the act of 1890, paragraph 99 of the act of 1894 provided for "Glass beads, loose, strung or carded," at the rate of 10 per cent. ad valorem. Had it not been that beads strung temporarily were regarded as not included within the term "loose" no necessity would have existed for incorporating the words "strung or carded," as the term "glass beads" without other qualifying words would have included those loose and also such as were strung or carded for purposes of convenience or transportation. Briefly summarizing the provisions of this paragraph we find included therein:

1. Loose beads;
2. Beads strung, and
3. Beads carded (that is, threaded and attached to cards solely for purposes of convenience or transportation).

The value of beads in the conditions specified increased in the order of their enumeration, and as paragraph 354 of the same act provided for articles manufactured from beads, the intent of Congress to include beads *temporarily* strung within the term "beads strung" is so manifest as to be hardly a debatable question. It is well worthy of consideration that paragraph 99 made provision only for
34 glass beads, and that metal beads strung on cotton cords were relegated for duty to the paragraph which provided for manufactures of metal, under the act of 1894, as they had been classified by judicial decision under the act of 1890; hence, during two tariff acts—from 1890 down to 1897—metal beads temporarily strung on cotton cords were classified as manufactures of metal.

In the act of July 24, 1897, Congress repealed paragraph 99 of the act of 1894, and re-enacted the provision of paragraph 445, act of 1890, in identical language with regard to beads of all kinds not threaded or strung. This was done with a full understanding relative to the class of goods included in the provision of the act of 1894 for loose beads and also that, by decisions of the courts and in accordance with the practice followed by customs officials and acquiesced in by importers for years, all beads—strung or threaded *in any manner*—were dutiable at the rate applicable to the material of which they were composed. In our opinion the intent of Congress was expressed in unambiguous language and that, both within the letter of the law and the intent of the lawmakers, only loose beads were provided for in paragraph 408 at 35 per centum ad valorem.

In accordance with the views herein expressed the protests before us are overruled and the collector's decision in assessing duty on the metal beads strung, now in controversy, at the rate of 45 per cent. ad valorem under paragraph 193 of the present act, in each case is affirmed.

(Signed) W. F. LUNT.
T. S. SHARRETTS.
C. P. McCLELLAND.

And for a certified statement of the facts involved in said
35 manner, as ascertained by them, the said Board states that said facts are fully set forth in the decision aforementioned, and that no other facts were ascertained by said Board than such as are shown by said decision and other Exhibits hereto attached.

WILBUR F. LUNT,
THAD. S. SHARRETTS,
Board of U. S. General Appraisers.

36 United States Circuit Court for the Southern District of New York.

No. 3770.

HENRY E. FRANKENBERG & Co.
vs.
THE UNITED STATES.

TOWNSEND, *Circuit Judge:*

The decision of the Board of General Appraisers is affirmed upon the decision in this Circuit in *In re* Steiner, 66 Fed., 726; affirmed in 79 Fed., 1003.

(Endorsed:) U. S. Circuit Court, Southern District New York.—Filed Jun- 1, 1905.—John A. Shields, Clerk.

37 At a Stated Term of the Circuit Court of the United States of America for the Southern District of New York, held at the United States Circuit Court Rooms in the Post Office Building, in the City of New York, on the 8th day of June, in the year of our Lord one thousand nine hundred and five.

Present: The Hon. William K. Thownsend, Circuit Judge.

"A" Suit, No. 3770.

H. E. FRANKENBERG COMPANY
vs.
UNITED STATES.

The above cause coming on for hearing and determination before this Court on the application of H. E. Frankenberg Company, importers, for a review of the questions of law and fact involved in the decisions of the Board of U. S. General Appraisers herein, and on the return of the Board of General Appraisers of the record and evidence taken by them, with their certified statement of the facts involved therein, together with their decisions thereon,

Now, after hearing Charles D. Baker, Assistant U. S. Attorney, on behalf of the Collector for affirmance, and Frederick W. Brooks, Esq., counsel for the said importers, for reversal, on motion of Henry L. Burnett, U. S. Attorney,

It is ordered, adjudged and decreed, that there was no error in said proceedings before said Board of General Appraisers,
38 and that their decisions herein be and the same are hereby in all things affirmed.

WM. K. TOWNSEND,
U. S. Circuit Judge.

Form assented to.
FREDERICK W. BROOKS,
Attorney for Importers.

(Endorsed:) "A" Suit No. 3770.—U. S. Circuit Court, Southern District of New York.—H. E. Frankenberg Company *v.* United States.—Judgment of Affirmance.—Henry L. Burnett, U. S. Attorney.—U. S. Circuit Court, Southern District of New York.—Filed Jun- 8, 1905.—John A. Shields, Clerk.

United States Circuit Court of Appeals for the Second Circuit.

Suit "A," No. 3770.

HENRY E. FRANKENBERG & Co., Appellant,
against
THE UNITED STATES, Appellee.

The said Henry E. Frankenberg Company hereby applies for the allowance of an appeal from the decision in the above-entitled suit or proceeding entered on the first day of June, one thousand nine hundred and five, because the question involved is of such
39 importance as to require a review thereof by the United States Circuit Court of Appeals.

FREDERICK W. BROOKS,
Attorney for Appellant.

Office and P. O. Address, 66 Beaver Street, Borough of Manhattan, City of New York.

Appeal allowed.
New York, June 28, 1905.

E. H. LACOMBE,
U. S. Circuit Court Judge.

(Endorsed:) "A" No. 3770.—U. S. Circuit Court of Appeals, for the Second Circuit.—Henry E. Frankenberg Company, Appellant, *vs.* The United States, Appellees.—Application for and Allowance of Appeal.—Frederick W. Brooks, Attorney for Appellant, 66 Beaver Street, N. Y. City.—A copy of the within paper has been this day received at this office. Jun- 30, 1905, Henry L. Burnett, U. S. Attorney.—U. S. Circuit Court, Southern District of New York.—Filed Jun- 30, 1905.—John A. Shields, Clerk.

40 United States Circuit Court of Appeals for the Second Circuit.

Suit "A," No. 3770.

HENRY E. FRANKENBERG COMPANY, Appellant,
against
THE UNITED STATES, Appellee.

Now come before the Justices of the United States Circuit Court of Appeals for the Second Circuit, at their Court Room, in the City of

New York, the said Henry E. Frankenberg Company, and say that in the record of the proceedings aforesaid there is manifest error in this, to wit:

The Circuit Court erred:

1. In affirming the decision of the Board of General Appraisers upon the Steiner case (66 Fed. Rep., 726; affirmed in 79 *Id.*, 1003) as decided in the Circuit Court and in this Court.

2. In not reversing the decision of the Board of General Appraisers upon the decision in the Circuit Court of Appeals for the Seventh Circuit in the case of United States *vs.* Buettner *et al.* (133 Fed. Rep., 163).

3. In not distinguishing this case from the Steiner case in view of the discrepancy between the testimony given in the former
41 and the evidence taken in the latter, as appears from the record in the former and from the Court's decision in the latter.

4. In not holding as a matter of law that the beads in this case were not threaded or strung, within the meaning of the provision for such goods found in paragraph 408 of the Tariff Act of July 24, 1897.

5. In not sustaining the claim of the importer as contained in the protests.

FREDERICK W. BROOKS,
Attorney for Appellant.

Office and P. O. Address, 66 Beaver Street, N. Y. City.

(Endorsed:) "A" Suit No. 3770.—U. S. Circuit Court of Appeals, for the Second Circuit.—Henry E. Frankenberg Company, Appellant, *vs.* The United States, Appellees.—Assignment of Errors.—Frederick W. Brooks, Attorney for Appellant, 66 Beaver St., N. Y. City.—A copy of the within paper has been this day received at this office. Jun- 30, 1895. Henry L. Burnett, U. S. Attorney.—U. S. Circuit Court, Southern District New York.—Filed Jun- 30, 1905.—John A. Shields, Clerk.

42 United States Circuit Court of Appeals for the Second Circuit.

Suit "A," No. 3770.

HENRY E. FRANKENBERG & Co., Appellant,
against
THE UNITED STATES, Appellee.

Know all men by these presents, That I, Frederick W. Brooks, Jr., am held and firmly bound unto the United States of America in the sum of two hundred and fifty dollars ($250), to be paid to the said United States of America, for the payment of which, well and truly to be made, I bind myself, my heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with my seal and dated the 27th day of June, in the year of our Lord one thousand nine hundred and five.

FREDERICK W. BROOKS. [SEAL.]

Whereas, the above-named Henry E. Frankenberg Company applies to the United States Circuit Court of Appeals for the Second Circuit to reverse a judgment rendered in the above-entitled suit or proceeding by the Judge of the Circuit Court for the Southern District of New York,

Now, therefore, the condition of this obligation is such, that if the above-named Henry E. Frankenberg Company shall prosecute said proceeding with effect and pay all damages and costs if they
43 shall fail to make said proceedings good, then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

BOROUGH OF MANHATTAN, *County of New York, ss:*

Frederick W. Brooks, Jr., being duly sworn, deposes and says: That he does business in the Southern District of New York, in the City of New York, and he is worth the sum of five hundred dollars ($500) over and above all his just debts and liabilities.

—— ——.

Sworn to before me this 27th day of June, 1905.

JOHN P. EELLS,
[SEAL.] *Notary Public.*

This Bond is approved as to form and amount and sufficiency of surety.

Dated New York, June 28, 1905.

E. HENRY LACOMBE,
U. S. Circuit Judge.

(Endorsed:) "A" No. 3770.—U. S. Circuit Court of Appeals, for the Second Circuit.—Henry E. Frankenberg Company, Appellant, *vs.* The United States, Appellees.—Bond for Costs.—Frederick W. Brooks, Attorney for Appellant, 66 Beaver Street, N. Y. City.—A copy of the within paper has been this day received at this office. Jun- 30, 1905.—Henry L. Burnett, U. S. Attorney.—U. S. Circuit Court, Southern District of New York.—Filed Jun- 28, 1905.—John A. Shields, Clerk.

44 UNITED STATES OF AMERICA, *ss:*

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals, for the Second Circuit, at the City of New York, on the 27th day of July, 1905, pursuant to an appeal on the part of the importer-, filed in the Clerk's Office of the Circuit Court of the United States for the Southern District of New

York, in a certain suit or proceeding entitled "Henry E. Frankenberg Company *vs.* The United States of America, 'A' No. 3770," to show cause, if any there be, why the decision of the United States Circuit Court in the said appeal mentioned, should not be reversed, modified or corrected and speedy justice should not be done in that behalf.

Given under my hand at the City of New York, in the Southern District of New York, on the 28th day of June, 1905.

E. HENRY LACOMBE,
Judge of the U. S. Circuit Court of Appeals for the Second Circuit.

FREDERICK W. BROOKS,
Attorney for Appellant.

Office and P. O. Address, 66 Beaver Street, Borough of Manhattan, City of New York.

(Endorsed:) "A" No. 3770.—U. S. Circuit Court of Appeals, for the Second Circuit.—Henry E. Frankenberg Co., Appellant, *vs.* The United States, Appellees.—Citation.—Frederick W. Brooks, Attorney for Appellant, 66 Beaver Street, N. Y. City.—A copy of the within paper has been this day received at this office, Jun- 30, 1905. Henry L. Burnett, U. S. Attorney.—U. S. Circuit Court, Southern District of New York.—Filed Jun- 30, 1905.—John A. Shields, Clerk.

45 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, do hereby certify that the foregoing pages, numbered from one to forty-four, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the cause entitled Henry E. Frankenberg Company, Appellant, against The United States, Appellee (No. 3770), as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 25th day of July, in the year of our Lord one thousand nine hundred and five, and of the Independence of the said United States the one hundred and thirtieth.

[L. S.] JOHN A. SHIELDS, *Clerk.*

46 United States Circuit Court of Appeals for the Second Circuit.

No. 138, October Term, 1905.

Argued February 22, 1906; Decided February 26, 1906.

(3770.)

THE HENRY E. FRANKENBERG COMPANY, Appellant,
vs.
THE UNITED STATES, Appellee.

Appeal from the Circuit Court of the United States for the Southern District of New York.

Before Judges Lacombe and Coxe.

This cause comes here upon appeal from a decision of the Circuit Court, Southern District of New York, which affirmed a decision of the Board of General Appraisers, which sustained the action of the Collector.

Per Curiam: The articles in question are metal beads which have been strung on cotton threads and the only question is whether they are dutiable under Par. 408 of the Tariff Act of 1897, which reads: "Beads of all kinds, not threaded or strung."

Precisely similar articles except that they are made of glass were before this court *In re* Steiner (79 F. R. 1003). It appeared in that case as in this that the beads were strung on very thin cheap cotton thread, that such stringing was temporary only for transportation and for convenience in selling and that they were unstrung before they were used. We sustain the Circuit Court in holding that such articles were not within Par. 445 of the Act of 1890
47 as "glass beads * * * unthreaded or unstrung."

No new facts and no new arguments are presented which would require a different decision in this cause. Reference is made to a decision of the Circuit Court of Appeals in the Seventh Circuit, U. S. *v.* Beuttner (133 F. R. 163), where the facts were apparently the same but the conclusion reached different from that in the Steiner case; and it is suggested that, in order to secure an harmonious interpretation of the Tariff Act, we should reverse our former decision and follow the Court in the Seventh Circuit. Inasmuch, however, as the decision of this Court, was first in order of time, that argument might more properly have been addressed to the Seventh Circuit. Since we are not persuaded by the later decision that we were in error in our first conclusion, the better course would seem to be to adhere to our former ruling, leaving it to the Supreme Court to secure uniformity by determining which of the conflicting constructions of the paragraph is the correct one.

The authorities which are found in the exhaustive brief of coun-

sel for the importers are not controlling because they deal with causes where a circuit court in one circuit has reversed its former decision to conform to a later decision of a circuit court of appeals in another circuit. Here the first decision was by a court of equal jurisdiction.

The decision of Circuit Court is affirmed.

F. W. Brooks, for the Appellant.

Charles D. Baker, Assistant United States Attorney, for the Appellee.

48 At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the Court Rooms in the Post Office Building in the City of New York, on the 7th day of March one thousand nine hundred and six.

Present: Hon. E. Henry Lacombe, Hon. Alfred C. Coxe, Circuit Judges.

(3770.)

HENRY E. FRANKENBURG COMPANY, Appellant,
vs.
UNITED STATES, Appellee.

Appeal from the Circuit Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the Circuit Court of the United States, for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the decree of said Circuit Court be and it hereby is affirmed.

It is further ordered that a Mandate issue to the said Circuit Court in accordance with this decree.

E. H. L.

49 Endorsed: United States Circuit Court of Appeals, Second Circuit. Frankenburg Co. *vs.* U. S. Order of Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Mar. 7, 1906. William Parkin, Clerk.

50 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby Certify that the foregoing pages, numbered from 1 to 49 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of H. E. Frankenburg Co. *vs.* United States, as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court

to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 9th day of April in the year of our Lord One Thousand Nine Hundred and Six and of the Independence of the said United States the One Hundred and Thirtieth.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN, *Clerk.*

51 UNITED STATES OF AMERICA *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Second Circuit, Greeting:

Being informed that there is now pending before you a suit in which Henry E. Frankenberg Company is appellant and The United States is appellee, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the Circuit Court of the United States for the Southern District of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United
52 States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the first day of May, in the year of our Lord one thousand nine hundred and six.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

53 [Endorsed:] File No. 20,200. Supreme Court of the United States. No. 698, October Term, 1905. Henry E. Frankenberg Company *vs.* The United States. Writ of certiorari. United States Circuit Court of Appeals, Second Circuit. Filed May 4, 1906. William Parkin, clerk.

54 In the Supreme Court of the United States, October Term, 1905.

No. 698.

HENRY E. FRANKENBURG COMPANY
vs.
THE UNITED STATES.

Stipulation as to Return.

It is hereby stipulated by counsel for the parties to the above entitled cause that the certified copy of the transcript of the record

now on file in the office of the clerk shall be taken as the return of the clerk of the Circuit Court of Appeals for the Second Circuit to the writ of certiorari issued herein.

FREDERICK W. BROOKS,
Counsel for Henry E. Frankenburg Company.
HENRY M. HOYT,
Solicitor General.

Endorsed: In the Supreme Court of the United States, October Term, 1905. Henry E. Frankenburg Company *vs.* The United States. No. 698. Stipulation as to return. United States Circuit Court of Appeals Second Circuit. Filed May 4, 1906, William Parkin, Clerk.

55 To the Honorable the Supreme Court of the United States, Greeting:

The record and all proceedings whereof mention is within made having been lately certified and filed in the office of the Clerk of the Honorable the Supreme Court of the United States, a copy of the stipulation of counsel is hereto annexed and certified as a return to the writ of certiorari issued herein.

Dated New York, May 4, 1906.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

56 [Endorsed:] 698, 20,200. United States Circuit Court of Appeals, Second Circuit. H. E. Frankenburg Co. *vs.* United States. Return to Writ of Certiorari.

57 [Endorsed:] File No. 20,200. Supreme Court U. S., October Term, 1905. Term No. 698. Henry E. Frankenberg Company, petitioner, *vs.* The United States. Writ of certiorari and return. Filed May 7", 1906.